

SERVICE DATE - JULY 3, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 254 (Sub-No. 11X)

PROVIDENCE AND WORCESTER RAILROAD COMPANY—DISCONTINUANCE OF
SERVICE EXEMPTION—IN MIDDLESEX COUNTY, CONN.

Digest:¹ This decision permits Providence and Worcester Railroad Company to discontinue rail service over an approximately 0.74-mile rail line in Portland, Middlesex County, Conn., subject to standard employee protective conditions.

Decided: July 2, 2019

On March 19, 2019, Providence and Worcester Railroad Company (P&W) filed with the Board a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to discontinue common carrier rail service over an approximately 0.74-mile portion of a line of railroad known as the Portland Industrial Track in Portland, Middlesex County, Conn. The track over which P&W seeks discontinuance authority extends between milepost 0.22 +/- and milepost 0.96, the end of the Portland Industrial Track (the Line). (Pet. 1.)

Notice of the exemption proceeding was served and published in the Federal Register on April 8, 2019 (84 Fed. Reg. 13,986). No comments were filed. The Board will grant the exemption from § 10903, subject to standard employee protective conditions.

BACKGROUND

P&W states that the Line is the stub end of the Portland Industrial Track that is owned by the Connecticut Department of Transportation (CDOT)² and is subject to a lease originally

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² The Line, purchased by the State of Connecticut from Consolidated Rail Corporation on March 26, 1987, was abandoned pursuant to § 308 of the Regional Rail Reorganization Act, as amended by the Northeast Rail Service Act of 1981 (NERSA), 45 U.S.C. § 748. See Conrail Aban. of the Middletown Secondary Track, AB 167 (Sub-No. 962N) (ICC served Mar. 24, 1987); see also Conn. Cent. R.R.—Exemption Operation—Certain Lines of the State of Conn., FD 31045, slip op. at 2 (ICC served June 3, 1987).

entered into between CDOT and the Connecticut Central Railroad Company (CCCL),³ P&W's predecessor. (Pet. 1-2.) See also Conn. Cent. R.R., FD 31045.

P&W states that, since 2009, there has been one active rail customer on the Line, RED Technologies, LLC (REDTECH). (Pet. 2.) P&W seeks an exemption to discontinue service over the Line in order to facilitate the expansion of REDTECH's business. (*Id.*) According to P&W, REDTECH shipped or received 402 carloads of freight in 2018, and REDTECH anticipates that its traffic will increase if it can obtain additional track for its plant switching operations. (*Id.*) REDTECH would like to use the Line for those private operations. (*Id.*) P&W states that REDTECH also anticipates building a sidetrack, in conjunction with P&W, on its property alongside the Line. (*Id.*) Because there are no other customers on the Line, P&W states that it is willing to sublease the Line to REDTECH if P&W is permitted to discontinue its common carrier service over the Line. (*Id.*) P&W further explains that it would continue to provide common carrier service over the remainder of the Portland Industrial Track, including to REDTECH, which it states it would continue to serve by delivering rail cars to, and picking up railcars from, the Line. (*Id.* at 2-3.)

Both REDTECH and CDOT support P&W's petition for exemption, and CDOT is agreeable to the sublease of the Line to REDTECH. (Pet. 2, Ex. B, C.)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of P&W's proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. An exemption from the application process would promote a fair and expeditious regulatory decision-making process, reduce regulatory barriers to exit, and result in the efficient handling of this proceeding. 49 U.S.C. § 10101(2), (7), (15). Other aspects of the RTP would not be adversely affected by the exemption.

³ P&W states that it acquired control of CCCL in April 1998 and that shortly thereafter, in May 1998, CCCL was merged with and into P&W. (Pet. 2 n.1.) See also Providence & Worcester R.R.—Corporate Family Transaction Exemption—Conn. Cent. R.R., FD 33592 (STB served May 15, 1998); Providence & Worcester R.R.—Acquis. & Operation Exemption—Conn. Cent. R.R., FD 33527 (STB served Mar. 3, 1998).

The Board also finds that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power. REDTECH, the only active rail customer on the Line, supports the petition for exemption. (Pet., Ex. B.) The record indicates that REDTECH would continue to receive common carrier service from P&W through the connection to the remainder of the Portland Industrial Track, once P&W is granted discontinuance authority. Accordingly, the discontinuance would not result in an interruption of service to REDTECH.⁴

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Therefore, as a condition to granting this exemption, the Board will impose on P&W the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Because no formal expressions of intent to file an offer of financial assistance (OFA) to subsidize continued rail service were filed by the April 18, 2019 deadline, the Board will not consider subsidy OFAs in this case. See 49 C.F.R. § 1152.27(c)(1)(i). And, because the Line was previously abandoned, the Board need not consider OFAs to acquire the Line, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905.⁵ Furthermore, no environmental review is required here where the underlying right-of-way was previously abandoned and where there is no indication that the discontinuance will result in potentially significant environmental impacts. See 49 C.F.R. § 1105.6(c)(1).

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of operations by P&W over the above-described rail line, subject to the employee protective conditions set forth in Oregon Short Line.
2. Petitions to reopen and petitions to stay must be filed by July 18, 2019.

⁴ Because the Board finds that regulation of the proposed discontinuance is not necessary to protect shippers from the abuse of market power, this decision need not determine whether the proposed discontinuance is limited in scope.

⁵ See Dakota Rail, Inc.—Pet. for Exemption from 49 U.S.C. 10901, 10903, and 11301, FD 30721, slip op. at 4 (ICC served Nov. 14, 1985) (finding that the agency cannot place conditions on the disposition of rail line property that has already been abandoned); see also Wisconsin Central v. STB, 112 F.3d 881, 883-84, 889-90, 892 (7th Cir. 1997) (finding that the subsequent lease of an abandoned line to an operator who wishes to provide common carrier service over that line subjects the operator and the service it provides to the agency's regulatory power, but not the owner and its property unless the owner takes an affirmative act indicating its willingness and ability to provide service in the lessee's stead).

3. This exemption will be effective on August 2, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman.